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June 12, 1998

VIA HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: **EX PARTE**
Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions -- MM Docket No. 97-217 and RM-9060

Dear Ms. Salas:

Yesterday, David Moore, Executive Director of Communications of the Archdiocese of Los Angeles Education and Welfare Corporation, Monsignor Michael J. Dempsey, President of the Catholic Television Network, Henry M. Rivera, Edwin N. Lavergne, and J. Thomas Nolan of the law firm of Shook, Hardy & Bacon, L.L.P., and William D. Wallace of the law firm of Crowell and Moring, LLP met with Chairman William Kennard and John Nakahata, and Charles Dziedzic and Keith Larson of the Mass Media Bureau. We discussed issues raised by the Catholic Television Network ("CTN") in an ex parte filing made on June 8, 1998 and other issues in the above-referenced proceeding as set forth more fully in the attachment to this letter.

Respectfully submitted,

J. Thomas Nolan
Counsel to the Archdiocese of
Los Angeles Education and Welfare Corporation

Attachment
cc: Chairman William Kennard
John Nakahata
Charles Dziedzic
Keith Larson

0005496.01

MM Docket No. 97-217
Archdiocese of Los Angeles Education & Welfare Corporation

BACKGROUND

The Archdiocese. The Archdiocese of Los Angeles Education and Welfare Corporation has operated ITFS facilities for over 30 years, making it one of the first ITFS licensees in the United States. Today, the Archdiocese is licensed on 14 ITFS channels and provides educational programming to more than 100,000 students in approximately 300 schools. The Archdiocese has agreed to make a portion of its ITFS channel capacity available to the Los Angeles County Public School System to distribute instructional programming to an *additional* 800 schools.

The Petition. This proceeding was initiated by the filing of a lengthy and complex petition for rule making asking the FCC to adopt rules to permit the deployment of new two-way communications services over ITFS and MDS frequencies.

The NPRM. In October 1997, the FCC issued a Notice of Proposed Rule Making adopting most of Petitioner's proposals. Significantly, the NPRM acknowledged that "some facets [of Petitioners' proposals] are so complex that they may prove difficult to implement and enforce." Nonetheless, because the proposals were considered to be "very forward-looking," the Commission decided to proceed "despite the complications and uncertainties which could arise."

WHY WE ARE HERE

CTN Hired Consulting Engineers To Review Petitioners' Proposals. Members of the Catholic Television Network (CTN) -- an association of 18 Roman Catholic Dioceses and Archdioceses including the Archdiocese of Los Angeles -- collectively distribute instructional television programming to 500,000 students throughout the nation. CTN is one of only two educational groups participating in this proceeding that hired professional consulting engineers to review Petitioners' technical proposals. This was done in the belief that independent review and analysis would assist the Commission in creating rules that are effective, fair, and easy to administer.

CTN's Engineers Identified Serious Interference Concerns. Petitioners seek a blanket license to deploy thousands of upstream response station transmitters at unknown subscriber locations. (*See Proposed rule 21.1 which defines a Response Station Hub License as a "blanket license authorizing the operation of a single response station hub at a specified location and the simultaneous operation of a limited number of associated response stations ... at unspecified locations..."*). CTN's engineers found that this would create "an unwarranted risk of interference to existing ITFS stations." *Joint Engineering Statement attached to CTN's January 8, 1998 Comments at para. 9.*

Petitioners Concede The Possibility of Interference. Petitioners concede that the potential for interference exists if a two-way system is improperly engineered even though such a system may be operated according to the terms of its license. For example, in a recent ex parte submission Petitioners stated that they "do not now and never have disagreed with CTN that a response station can cause adjacent channel interference under some circumstances." *Petitioners' Ex Parte Letter filed April 27, 1998 at 6.* Similarly, Petitioners stated that they "cannot say that interference from downconverter overload will never occur if the rules proposed in the Petition are adopted." *Petitioners' Response to Request for Supplemental Comment Period and Extension of Time filed Dec. 1, 1997 at 3.*

Petitioners Want To Cure Interference *After* It Occurs. Petitioners have proposed that if interference occurs, the licensee of the offending response station transmitter should be required to remedy the interference. For example, in a recent ex parte filing the Petitioners stated that although they believe that the risk of brute force overload is virtually non-existent, "if interference nonetheless occurs due to response station operations, the offending transceivers will have to cease operating!" *Petitioners' Ex Parte Letter filed April 27, 1998 at 4.*

Petitioners' Proposal Would Place The Risk of Interference On ITFS Licensees. Under the proposed rules, an ITFS licensee that experiences brute force interference would be required to notify one or more licensees of upstream response station hubs in the area. These licensees would, in turn, have to identify which one or more of potentially hundreds of transmitters were causing the problem. *See proposed rule 21.909(f)(8).* However, until the problem transmitters can be identified and the problem rectified, the ITFS licensee would have to live with the interference. This would make an ITFS licensee's right to exclusive use of the spectrum a farce, and would stand the principle of interference-free operation on its head.

With respect to adjacent channel interference, Petitioners have proposed no solution at all, except, apparently, to require affected licensees to involuntarily move to different channels. *See proposed rule 21.901(d).* The effect of implementing such a proposal would be to grant wireless cable operators the ultimate right to control the assignment and use of the ITFS spectrum. This would be tantamount to a de facto reallocation of ITFS spectrum.

WHAT THE FCC CAN DO

The FCC Should Not Rush To Judgment. Members of the WCA have proclaimed that the release of an order in this proceeding will be timed to coincide with an announcement at the WCA convention in July. The Commission should not let the timing of the Wireless Cable Association convention dictate how public policy is made in this proceeding. Our concerns are exacerbated by the fact that Petitioners have proposed extensive new rule revisions in two 100-page filings, and further revisions to their proposed engineering methodology. CTN's engineers need time to review and comment on these proposed revisions. Indeed, rule changes of the magnitude and detail proposed by Petitioners at the eleventh hour warrant a renewed public notice and comment period. The Commission should take the time *now* to ensure that the rules contain adequate protection for ITFS licensees, to avoid a lengthy appeal process.

The FCC Should Adopt Rules That Will Ensure Interference-Free Reception of ITFS Signals. It would be *inconceivable* for the Commission to issue a blanket license on frequencies adjacent to a *commercial* television channel based on the adjacent channel licensee's promise to mitigate any interference that it might cause. Similarly, the Commission should not place this burden on ITFS licensees, who have the need and expectation of interference-free operation. While some ITFS licensees may be able to protect themselves through contractual arrangements, not all ITFS licensees have the bargaining power to insist upon such protections, and many licensees do not lease excess capacity.

There Are Solutions. Many parties, including CTN, BellSouth, and AT&T, have proposed solutions to the interference problem. These proposals include:

- ✓ 6 MHz separation between upstream and downstream ITFS operations (CTN)
- ✓ Notification and testing zones (CTN)
- ✓ Separate upstream and downstream allocations (BellSouth)
- ✓ Response station transmitter emission mask (AT&T)
- ✓ Equipment upgrade (AT&T)

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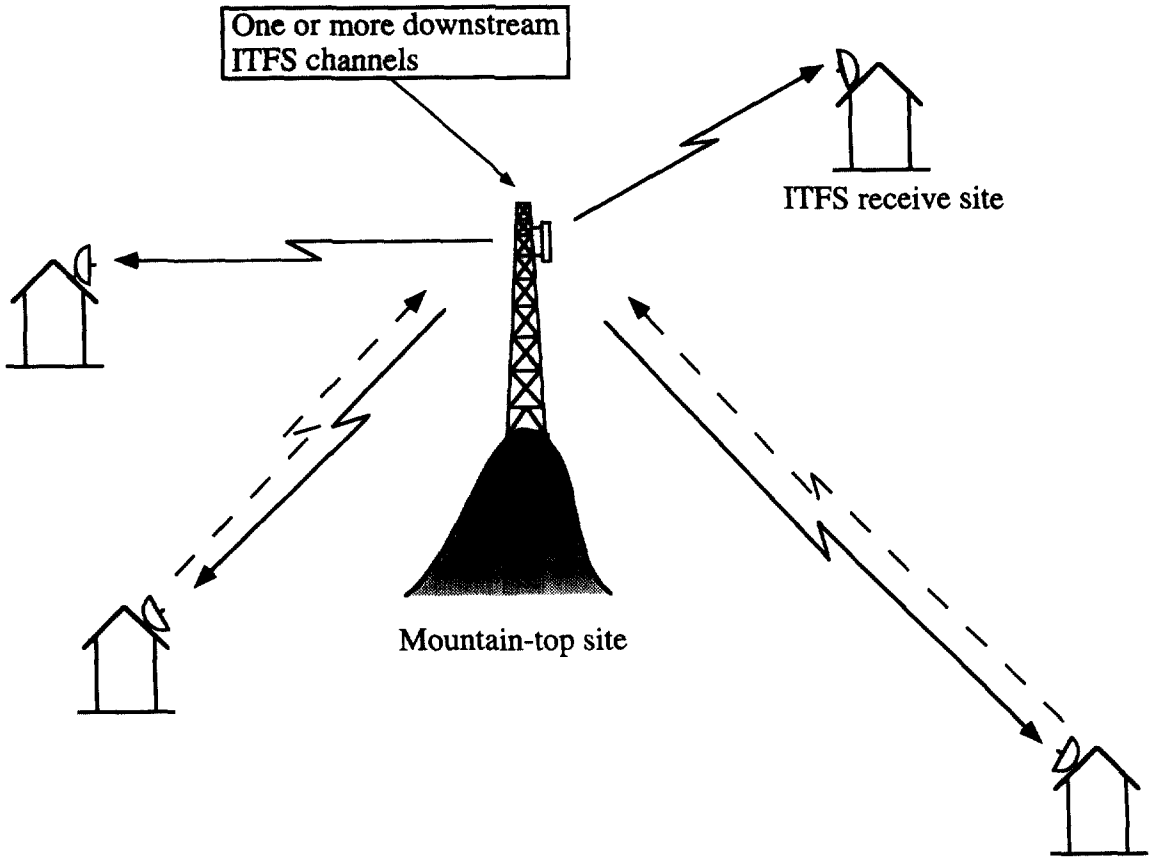
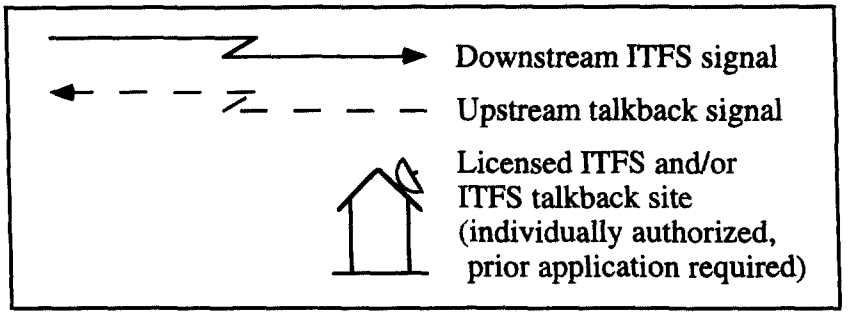
Conclusion. The Archdiocese *supports* the adoption of rules to permit two-way operations on ITFS and MDS frequencies. Unfortunately, the rules as currently proposed would place an unacceptable burden on ITFS licensees.

For more than a decade, the Commission has taken steps to revitalize the wireless cable industry and bring much-needed competition to cable. Despite the Commission's efforts, many wireless cable operators are struggling for survival. Now, at the urging of the wireless cable industry, the Commission has before it proposals that would utterly transform the ITFS spectrum in order to give wireless cable operators the opportunity to compete in the market for high-speed data transmission and Internet access. However, the Commission must ensure that the transformed ITFS spectrum still serves its primary purpose of enhancing education and distance learning in both traditional formats and in new applications made possible by advanced technology. By adopting the relatively simple changes that CTN and others have proposed, the advantages of two-way rules can flow to all users of this spectrum.

Catholic Television Network

Conventional ITFS Architecture





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Two-Way "Cellularized" Wireless Cable Architecture